

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34490

STATE OF IDAHO,)	2008 Unpublished Opinion No. 642
)	
Plaintiff-Respondent,)	Filed: September 12, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
JARED TYSON GOERING,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Gregory S. Anderson, District Judge.

Order denying I.C.R. 35 motion to correct an illegal sentence, affirmed.

Jared Tyson Goering, Orofino, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer E. Birken, Deputy Attorney General, Boise, for respondent.

PER CURIAM

Jared Tyson Goering was charged with two counts of lewd conduct and pursuant to a plea agreement, pled guilty to one count of lewd conduct with a minor under sixteen, I.C. § 18-1508, and was sentenced to a unified term of twenty years with three years determinate. More than two years later, Goering filed an Idaho Criminal Rule 35 motion to correct an illegal sentence, which the district court denied. Goering appeals, contending that the district court abused its discretion by denying his Rule 35 motion.

Goering asserts his sentence violated his Fifth Amendment rights, and also violated his Idaho constitutional rights because his attorney was ineffective and allegedly failed to advise him of his Fifth Amendment privilege to refuse to submit to a court-ordered psychosexual evaluation used for sentencing purposes. An illegal sentence under Rule 35 is one in excess of a statutory provision or otherwise contrary to applicable law. *State v. Alsanea*, 138 Idaho 733, 745, 69 P.3d 153, 165 (Ct. App. 2003) (citing *State v. Lee*, 116 Idaho 515, 516, 777 P.2d 737, 738 (Ct. App.

1989)). Goering's sentence is within statutory limits and is not otherwise contrary to applicable law.

Idaho Criminal Rule 35 provides in part: "Motions to correct or modify sentences under this rule must be filed within 120 days of the judgment imposing sentence." A district court has no authority to extend the 120-day deadline for filing a Rule 35 motion. *State v. Fox*, 122 Idaho 550, 835 P.2d 1361 (Ct. App. 1992) ("The filing deadlines described in Rule 35 create a jurisdictional limitation on the authority of the trial court to entertain motions under the rule. Without a timely filing, the court cannot consider the motion." (Internal citations omitted)). To the extent Goering's request for Rule 35 relief is based upon a claim that his sentence was imposed in an illegal manner, the district court lacked jurisdiction to consider it because it was filed well beyond the 120-day time limit provided for in I.C.R. 35.

Accordingly, the order of the district court denying Goering's Rule 35 motion is affirmed.